

STATE OF RAJASTHAN
v.
MANOJ SHARMA AND ANR.
(Criminal Appeal Nos. 303-304 of 2003)

MARCH 3, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Narcotic Drugs and Psychotropic Substance Act, 1985:

ss.50, 27 – Applicability of – Seizure not from person of accused but from inside the house – Held: s.50 has no application – On facts, High Court did not keep in view the definite evidence led by State to show that it was not possible to get independent witness – Acquittal of respondent 1 cannot be maintained – Quantity seized was only 8 gms i.e. small quantity, therefore, respondent 1 has to be convicted in terms of s.27 – Regarding respondent 2, High Court indicated in great detail deficiency in charge – No interference with acquittal – Notification dated 327 E dated 16/7/1996.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 303-304 of 2003.

From the Judgment & Order dated 11.9.2001 of the High Court of Judicature at Rajasthan at Jaipur Bench in S.B. Criminal Appeal No. 53/98 and 98/98.

Dr. Manish Singhvi, AAG, Milind Kumar and Sandeep Bajaj for the Appellant.

C.L. Sahu for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals

A is to the judgment of a learned Single Judge of the Rajasthan High Court allowing the appeals filed by the respondents Manoj Sharma and Mohammed Rafiq in S.B.Crl. No. 53/98 and 98/98. The accused-respondent No. 1 Manoj Sharma faced trial for alleged commission of offence punishable under Section 8 read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'Act'). Accused No. 2 Mohammed Rafiq was charged for offence punishable under Section 8 read with Section 29 of the Act for offence for abatement of commission of offence. The trial Court convicted the accused persons. The High Court directed acquittal on the ground that there was inconsistency in the evidence and non-compliance of the provisions of Section 50 of the Act apart from other inconsistencies. So far accused Mohammed Rafiq is concerned the High Court noted that there was deficiency in change regarding place of seizure. As regards the accused D Manoj Sharma, it was observed that it was non-compliance with requirement of Section 50 of the Act. Independent witnesses were not procured. Accordingly, the High Court directed acquittal.

E 2. In support of the appeal, learned counsel for the appellant-State submitted that since the seizure was from a place inside the house and not from the person of the accused, Section 50 has no application.

F 3. Additionally, it was submitted that the difficulties encountered by the official in getting independent witnesses has not been considered by the High Court. It was clearly brought on record that inspite of efforts no independent witness could be procured as the accused persons were known ruffians.

G 4. In spite of service of notice, there is no appearance on behalf of the respondent.

H 5. So far as the alleged noncompliance with the requirements of Section 50 is concerned, this Court in several cases held that the provision has no application when the

search is not of a person. In the instant case, the seizure was not from person of accused, but from inside the house. That being so, Section 50 of the Act had not application to the facts of the case. The High Court does not appear to have kept in view the definite evidence laid by the State to show that how it was not possible to get any independent witness. That being so, the acquittal of accused Manoj Sharma cannot be maintained. However, it appears that the quantity seized was 8 gram in view of notification dated 327 E dated 16/7 / 1 996 of the Central Government issued in exercise of power under Section 27 of the Act which provided that if an accused is found in possession upto 25 gms. of opium then such accused can be awarded such sentence according to the Act meant for "small quantity".

6. The provision of Section 27 relating to personal use has clear application. Therefore, the accused person Manoj Sharma has to be convicted in terms of Section 27 of the Act. It appears from the record that the accused has suffered custody of about 2 years. The sentence is reduced to the period already undergone.

7. So far as Mohammed Rafiq is concerned, the High Court has indicated in great detail deficiency in charge. That being so, we are not inclined to interfere with the acquittal of Mohammed Rafiq as directed by the High Court.

8. The appeals are accordingly disposed of.

D.G.

Appeals disposed of.